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S. 2045 — American Competitiveness in the Twenty-First Century Act

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Reported from the Committee on the Judiciary April 11, 2000, with an amendment in the nature of substitute, by a vote of 16-2 (Senators Kennedy and Feingold voting in the negative). S. Rept. 106-260; additional views filed.

NOTEWORTHY

- By unanimous consent, a cloture vote on the motion to proceed to S. 2045, the American Competitiveness in the Twenty-First Century Act of 2000, will occur on the afternoon of Tuesday, September 19, 2000, immediately following final passage of H.R. 4444, the China PNTR bill.
- S. 2045 amends the Immigration and Nationality Act to provide for more workers with special skills to enter the United States on a temporary basis in the H-1B visa category, notably in fields connected to information technology.
- The Committee bill also contains measures to encourage more young people to study mathematics, engineering, and computer science and to train more Americans in these areas.
- S. 2045 authorizes the appropriation of \$20 million per year from FY 2001 through FY 2006 for grants by the Attorney General to the Boys and Girls Clubs of America for after-school technology programs, such as PowerUp.
- The Clinton Administration favors enactment of legislation to expand short-term availability of H-1B visas but wants it to include additional provisions, such as adjustment of status for certain Cuban, Nicaraguan, and Haitian nationals, that are not included in S. 2045. (See "Other Views," page 5 and "Possible Amendments," page 6.)

BACKGROUND

Current law allows employers seeking workers with special skills to hire foreign nationals admitted to the United States on a temporary basis under the H-1B nonimmigrant visa classification. These H-1B visas are valid for three years, after which they can be renewed for an additional three years, thus allowing a maximum stay of six years. Persons admitted under these visas cannot stay permanently unless they are sponsored by an employer for a separate, permanent employment-based immigrant visa, for which there is a separate and lengthy approval process.

In order to qualify for an H-1B visa, an individual must be in a "specialty occupation." According to the law (Section 214(i)(1) of the Immigration and Nationality Act (INA)):

"The term 'specialty occupation' means an occupation that requires —

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States."

To qualify for an H-1B visa, a nonimmigrant must have "full state licensure to practice in the occupation, if such licensure is required to practice in the occupation" or must possess "experience in the specialty equivalent to the completion of [a bachelor's or higher degree], and recognition of expertise in the specialty through progressively responsible positions relating to the specialty." (INA Section 214(i)(2)).

S. 2045 expands the availability of skilled foreign workers in the H-1B category at a time when the number of visas in this category under existing law has been exhausted and American employers will not be able to lawfully hire skilled foreign nationals on H-1Bs for the remainder of fiscal year 2000. (The last increase in H-1Bs was enacted in the 1998 American Competitiveness and Workforce Improvement Act, which increased the annual ceiling for admission of H-1B nonimmigrants from 65,000, set in the 1990 Immigration Act, to 115,000 in fiscal year 1999 and fiscal year 2000, and 107,500 in fiscal year 2001. That bill also strengthened enforcement of the terms and conditions of H-1B visas and levied a \$500-per-visa fee to fund training and scholarships for U.S. workers and students.)

S. 2045 builds on the 1998 act by further raising the current ceiling on temporary visas to 195,000 for fiscal year 2000, fiscal year 2001, and fiscal year 2002. In addition, it provides for exemptions from the ceiling for graduate degree recipients from American universities and personnel at universities and research facilities to allow these educators and top graduates to remain in the country.

S. 2045 also addresses the long-term problem that too few U.S. students are entering and excelling in mathematics, computer science, engineering, and related fields. It contains measures to encourage more young people to study mathematics, engineering, and computer science and to train more Americans in these areas. Specifically, the bill extends the \$500-per-visa fee originally authorized in the 1998 bill. This fee is assessed on each initial petition for H-1B status for an

individual, on each initial application for extension of that individual's status, and on each petition required on account of a change of employer or concurrent employment. These fees fund scholarships for U.S. students and training for U.S. workers. Using the same assumptions on the rate of renewals, changes of employer, and the like that the Committee and the Administration relied on in estimating the impact of the 1998 legislation, the increase in visas under S. 2045 should result in total funding for training, scholarships, and administration of H-1B visas of approximately \$450 million over fiscal year 2000, fiscal year 2001, and fiscal year 2002. The Committee anticipates that this funding will allow for 40,000 scholarships to U.S. students, thereby helping them to pursue these important fields.

BILL PROVISIONS

Section 1. Short Title.

American Competitiveness in the Twenty-First Century Act of 2000.

Section 2. Temporary Increase in Visa Allotments.

This section increases available nonimmigrant H-1B specialty occupation visas for FY 2000 through 2002 as follows: 80,000 addition visas for FY 2000; 87,500 for FY 2001; and 130,000 for FY 2002. This would provide a total of 195,000 H-1B visas for each of those years.

Section 3. Special Rule for Universities, Research Facilities, and Graduate Degree Recipients.

This section amends the Immigration and Nationality Act to exempt from H-1B numerical limits an alien: (1) who is employed at an institution of higher education or related nonprofit entity, nonprofit research or governmental research entity; or (2) for whom a petition has been filed within a specified time before or after attainment of a master's or higher degree from a U.S. institution of higher education.

Section 4. Limitation on Per-Country Ceiling with Respect to Employer-Based Immigrants.

This section makes employment-based immigrant visas available on a quarterly basis without regard to per-country limitations if unused visas are available. This section also provides transitional protection for individuals present in the United States on H-1B visas by authorizing a U.S.- residency extension for a nonimmigrant alien for whom an employment-based immigrant petition has been filed but who is subject to the per-country limit until resolution of such alien's application for adjustment to immigrant status.

Section 5. Increased Portability of H-1B Status

This section authorizes a qualifying H-1B alien to accept new employment upon a prospective employer's filing of a new petition, rather than having to wait for the petition to be approved as required by current law. This change is designed to address concerns about potential exploitation of H-1B visa holders as a result of a specific employer's control over the employee's legal status.

Section 6. Extension of Authorized Stay in Cases of Lengthy Adjudications.

This section provides for one-year extensions of authorized H-1B stay in cases of permanent residence adjudications lasting 365 days or longer.

Section 7. Extension of Certain Requirements and Authorities

This section extends: (1) existing attestation and fee requirements through October 1, 2002; and (2) investigative authorities under the American Competitiveness and Workforce Improvement Act of 1998 through September 30, 2002.

Section 8. Recovery of Visas Used Fraudulently.

This section provides, with respect to nonimmigrant visa petitions subject to numerical limits, for the numerical restoration of such visas fraudulently obtained, effective for the fiscal year of petition revocation.

Section 9. Study by National Science Foundation on "Digital Divide"

This section directs the National Science Foundation (NSF) to conduct a study of the divergence in access to high technology (known as the "digital divide") in the United States.

Section 10. Modification of Nonimmigrant Petitioner Account Provisions.

This section amends the Immigration and Nationality Act with respect to the allocation of H-1B visa fees from the Treasury H-1B Nonimmigrant Petitioner Account to: (1) reduce amounts for job training, and mathematics, engineering, or science enrichment courses; and (2) increase amounts for low-income scholarships for mathematics, engineering, or computer studies. It also amends the 1998 American Competitiveness and Workforce Improvement Act with respect to such low-income National Science Foundation scholarships to: (1) increase maximum amounts to \$3,125; and (2) authorize four-year extensions. In addition, it amends the Immigration and Nationality Act to obligate H-1B account amounts to the National Science Foundation (NSF) in support of private-public education partnerships in K-12 math, science, and technology. Finally, it amends the 1998 American Competitiveness and Workforce Improvement Act of 1998 to direct the NSF and the Department of Labor to monitor H-1B grant programs.

Section 11. Kids 2000 Crime Prevention and Computer Education Initiative.

This section directs the Attorney General to make grants to the Boys and Girls Clubs of America for after-school technology programs, such as PowerUp. It also authorizes the

appropriation of \$20 million for each of fiscal years 2001 through 2006 for the purposes of this section from the Violent Crime Resolution Trust Fund as a fund source.

ADMINISTRATION POSITION

No Statement of Administration Policy had been received at press time, but it is known that the Administration favors enactment of legislation to expand availability of H-1B visas but wants it to include provisions for adjustment of status of certain Cuban, Nicaraguan, and Haitian nationals not included in S. 2045.

COST

According to the Congressional Budget Office estimate, S. 2045 would result in net decreases in outlays during FY 2000 and FY 2001 in the amounts of \$84 million and \$38 million, respectively, due to changes in formulas governing the allocation of H-1B visa fees collected by INS. After FY 2001, the provisions of S. 2045 would result in net increases in outlays as follows: \$15 million in FY 2002, \$93 million in FY 2003, \$63 million in FY 2004, and \$18 million in FY 2005. These estimates assumed an enactment date of June 1, 2000.

OTHER VIEWS

The Committee report includes the Additional Views of Senators Leahy, Kennedy, Biden, Feingold, Torricelli, and Schumer; of these, only Senators Kennedy and Feingold voted against reporting S. 2045 from Committee. The Senators state their opinions to effect that —

- A modest increase in the H-1B high-tech visa cap is justified, but this increase must be temporary, reasonable, and sufficiently tailored to meet existing short-term needs;
- It must be ensured that U.S. workers are not harmed by our immigration policies;
- Expanding job training for U.S. workers is the only long-term solution to labor shortages;
- Educational opportunities for U.S. students must be increased;
- The workforce training program should be expanded, not dismantled; and

- Other, equally important immigration issues must be considered, such as parity legislation for Central Americans and Haitians, restoring due process in detention and deportation policy, and restoring public benefits to legal immigrants and protections to battered immigrant women and children.

POSSIBLE AMENDMENTS

Possible amendments to S. 2045 include:

Craig/Smith (OR). To establish a system of registries of temporary agricultural workers to provide for a sufficient supply of such workers and to amend the Immigration and Nationality Act to streamline procedures for the admission and extension of stay of nonimmigrant agricultural workers (similar to S. 1814).

Kennedy/Graham (FL). To remove certain limitations on the eligibility of aliens (mainly Cuban, Nicaraguan, and Haitian nationals) residing in the United States to obtain lawful permanent residency status (similar to S. 2912).

Kennedy. To raise fees paid by employers of H-1B visa holders and to institute new labor requirements regarding U.S. worker displacement and worker training.

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